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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			DESAI, ANISH P	
			ART UNIT	PAPER NUMBER
			1794	
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			09/03/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/743,864	Applicant(s) NOJIRI, HIDEYUKI	
	Examiner ANISH DESAI	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-61 is/are pending in the application.
- 4a) Of the above claim(s) 41,42,48,55 and 56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39,40,43-47,49-54 and 57-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's arguments in response to the Office action mailed on 12/24/08 have been fully considered.
2. All of the art rejections are maintained, except that for 35 USC Section 102(b)/103(a) rejections to claim 45 based on Honda (US 4,589,432), the 35 USC Section 103(a) portion of said rejection is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

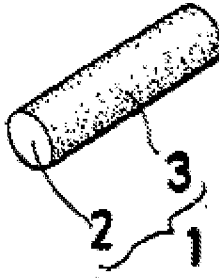
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claim 45 is rejected under 35 U.S.C. 102(b) as anticipated by Honda (US 4,589,432).**
4. Regarding claim 45, Honda discloses an eyelash permanent curl setting rod (equated to Applicant's string member) comprising a solid or hollow rod member that is formed of material such as rubber (abstract, column 2 lines 25-30), and a coating of adhesive agent 3 applied to the circumferential periphery of the rod member. The rod member of Honda is shown below in Figure 2. The string member of Honda that is

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formed of rubber is equated to Applicant's resiliently stretchable elongate string member.



5. The rod member of Honda as shown above includes a first surface and a second surface to elongate consistently along the entire longitudinal direction of the string member while these surfaces are oppositely faced to each other as claimed. Further, the first surface and the second surface of Honda's string member each have a pair of side edges that consistently elongate along the entire longitudinal direction of the string member as claimed. Additionally, the individual side edges of the first surface and the second surface are each in linear forms in parallel to each other along the whole longitudinal direction of the string member is in the unstretched state as claimed. Moreover, the cross sections (not shown but can be ascertained from Figure 2) of the first surface and the second surface perpendicular to the longitudinal direction of the string member each have outwardly protruding arcuate shapes along the entire longitudinal direction of the string member when the string member is in the unstretched state as claimed. Moreover, the cross sections (not shown but can be ascertained from Figure 2) each would have a uniform form along the whole longitudinal direction of the string member when the string member is in the unstretched state.

6. As to the claimed features of "A double eyelid forming article for forming a fold on an eyelid of a user", the string member "configured to adhere to the eyelid in a stretched state along a longitudinal direction, wherein the string member in the stretched state is configured to have....due to the resilient shrinkability to form a double eyelid", it is reasonable to presume that Honda's string member is functionally capable of meeting the aforementioned claimed features. Because the structure and composition of Honda's string member is same as that of Applicant's string member. As set forth above, Honda's string member is formed of resiliently stretchable material such as rubber and it is covered with adhesive. Applicant's string member is also resiliently stretchable and is covered with adhesive. Further, as set forth above, the structures of Honda and Applicant's string member are structurally same. Therefore, Honda's string member is functionally capable of meeting the aforementioned claimed features. Accordingly, Honda anticipates the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 39, 40, 43, 44, 51-54, 57, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodgson (US 3,645,835).

8. It is noted that claims 39 and 51 recites "a double eyelid forming article of manufacture for forming a fold on an eyelid of a user", "configured to be adhered onto an eyelid in a stretched state along a longitudinal direction to form a double eyelid", and "the tape member in the stretched state is configured to have a resilient shrinkability larger than tension of skin on the eyelid...for forming a fold on the eyelid by adhering to the eyelid while the tape member is in the stretched state and subsequently recoiling back toward the unstretched state" are related to an intended use of the claimed article (i.e. tape member or string member).

9. It is respectfully submitted that the aforementioned recitations are intended use of the article, while some of the recitations are functional, it is respectfully submitted that if a structure and composition of the prior art article is same as claimed by the Applicant's article, then the prior art article is functionally capable of meeting the aforementioned recitations. Thus, any reference disclosing a tape member that is resiliently stretchable (i.e. elastic) having "a first and second surface to elongate consistently along the entire longitudinal direction of the tape member while these surfaces are oppositely faced to each other", "the first surface and the second surface...pair of side edges that consistently elongate...the entire longitudinal direction of the tape member", "the individual side edges of the first surface and the second surface...forms in parallel to each other" along the whole longitudinal direction...when the

tape member is in an unstretched state, cross sections of the first surface...uniform form along the whole longitudinal direction...when the tape member is in the unstretched state...the first surface and the second surface each have an adhesive layer...entirety of the first surface and the second surface, the tape member has a consistent...along the entire longitudinal direction", will read on the claims.

10. Hodgson discloses adhesive materials for use on animal bodies especially human bodies for surgical, dermatological or cosmetic use. The examples include surgical drapes, adhesive dressings, strips and sheets, and eyeliners (Column 2. lines 74-75, Column 3. lines 1-5). Additionally, according to Hodgson another preferred use of the present invention is in surgical drapes. These are large flexible sheets, which are provided with a continuous layer of adhesive on at least a part only of one surface (column 7, lines 64-67). Further, at column 1 lines 25-30, Hodgson discloses "According to the present invention...a backing material having a pressure-sensitive adhesive on at least substantially the whole of the body-adhering portion of at least one surface of said backing material". This disclosure of applying the adhesive on at least one surface of the tape is interpreted as that adhesive layer can be applied on the both surfaces of the tape member, and it reads on the claim requirement of "the first surface and the second surface each have an adhesive layer covering an entirety of the first surface and the second surface".

11. Further, the adhesive drape of Hodgson as shown in Figure 7 has a backing layer 2 having an adhesive coating 4 on the surface of the backing layer. Further, the adhesive 4 is covered by a protector 6 (column 10, lines 27-31). The backing layer 2 of

Hodgson is preferably formed of a polyurethane film (column 8, lines 5-6). At column 5, lines 69-74, Hodgson discloses Estane 5701 and 5702 brand thermoplastic polyurethane films, which is a polyurethane elastomeric film as evidenced by US 2007/0066185A1 to Felipe (paragraph 0058). Further, Hodgson teaches a use of elastic backing material (column 10, lines 38-39). The elastic backing layer 2 of Hodgson having an adhesive coating 4 is equated to a resiliently stretchable elongate tape member.

12. Moreover, the adhesive tape member of Hodgson, as shown in Figure 7 has "the a first surface and a second surface" that "elongate consistently along the entire longitudinal direction of the tape member while these surfaces are oppositely faced to each other" and "the individual side edges of the first surface and the second surface are each in linear forms in parallel to each other along the whole longitudinal direction of the tape member when the tape member is in an unstretched state". Additionally, if one were to examine the cross-section of the adhesive tape member of Hodgson as shown in Figure 7, it would read on "cross sections of the first surface...is in the unstretched state, the cross sections each have uniform form along the whole longitudinal direction...is in the unstretched state".

13. Additionally, as to the claim requirement of "the elongate member includes a pair of holding portions configured to be held with fingers and arranged individually on a first end of the elongate member and a second end of the elongate member along the longitudinal direction", Hodgson teaches that the two edges 24 of the backing material 2 are left uncoated (column 10, lines 31-32). Moreover, as to the claim requirement of

“the elongate member includes an adhering portion”, the claim does not explicitly exclude the adhering portion from being a part of the surfaces of the tape member, therefore a portion of the backing layer surface of Hodgson which is covered with an adhesive layer is equated to the “adhering portion”.

14. With respect to the claim requirements of “the tape member in the stretched state is configured to have a resilient shrinkability larger than tension of skin on the eyelid...for forming a fold on the eyelid by adhering to the eyelid while the tape member is in the stretched state and subsequently recoiling back toward the unstretched state” and “the elongate member is configured to form the double fold by adhering to the eyelid where the elongate member...subsequently recoiling back toward the unstretched state due to the resilient shrinkability”, “the first end of the elongate member and the second end of the elongate member along the longitudinal direction of the...form a part configured to be removed after the double eyelid is formed”, the Examiner submits following:

15. It is reasonable to presume that the adhesive tape member of Hodgson has the properties of “resilient shrinkability” and sufficient width and a sufficient length for forming the fold. Because as set forth above the adhesive tape members of Hodgson and that of Applicant have similar structure and composition. Therefore, the aforementioned features would be present. The burden is shifted to Applicant to prove it otherwise (see *In re Fitzgerald*, 205 USPQ 594).

16. Moreover, as to the claim requirement of the arrangement of a release material on each of the adhesive layers on the first surface and the second surface. It is noted

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that Hodgson discloses of applying the adhesive on at least one surface of the backing (column 1 lines 25-31) and covering the adhesive layer with a silicone-coated release paper (column 6 lines 70-73 and column 7 lines 70-71).

17. Thus, it would have been obvious to provide an adhesive on the second surface of the backing and cover it with a release layer, motivated by the desire to protect the adhesive layer.

18. As to the claim requirement of the elongate member being a string member and “cross sections...arcuate shapes...unstretched state”, it is noted that the invention of Hodgson is used in surgical drapes, suture strips...solid eye liners etc. (column 3 lines 1-5). Further, Hodgson discloses the size and the shape of the suture strips may of course be varied as desired (column 8 lines 44-53). Therefore, choosing a shape the tape member in the form of a string having outwardly protruding arcuate shapes involves routine skill in the art.

19. **Claims 45, 46, 50, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clavin (US 4, 653, 483).**

20. It is respectfully submitted that recitation “a double eyelid forming article of manufacture for forming a fold on an eyelid of a user”, “configured to adhere to the eyelid in...to form a double eyelid”, and “wherein the string member in the stretched state is configured to have a resilient shrinkability larger than a tension of skin on the eyelid and...recoiling back toward an unstretched state due to the resilient shrinkability

to form a double eyelid", are intended use of the claimed article. While some of these recitations are functional in nature, it is respectfully submitted if a structure and composition of the prior art article is same as claimed by Applicant's article, then the prior art article is capable of functioning the intended use as presently claimed.

21. Thus any reference disclosing a string member that is resiliently stretchable (i.e. elastic) having "a first and second surface to elongate consistently along the entire longitudinal direction of the same member while these surfaces are oppositely faced to each other", "the first surface and the second surface...pair of side edges that consistently elongate...the entire longitudinal direction of the tape member", "the individual side edges of the first surface and the second surface...forms in parallel to each other" "long the whole longitudinal direction...when the tape member is in an unstretched state, cross sections of the first surface...uniform form along the whole longitudinal direction...when the tape member is in the unstretched state...the first surface and the second surface each have an adhesive layer...entirety of the first surface and the second surface, the tape member has a consistent...along the entire longitudinal direction", will read on the claims.

22. Calvin discloses an adhesive tape having a backing and a layer of adhesive on each side of the adhesive tape (see abstract, Figure 15 and column 5 lines 1-5). As to the claim requirement of "string member", it is noted that Applicant has generally recited "a string member" but not provided any dimension (e.g. diameter, length etc.) of a string member nor defined what is meant by "string member". It is noted that Calvin's tape is applied to an eyelid to retain a fold in the skin thereof (column 1 lines 10-15). Further,

Clavin discloses that "According to the present invention, a very thin strip of double-sided adhesive tape 32 generally **less than 1 cm in width** and 4 cm in length is attached to the upper eyelid 10 (column 3 lines 50-55). This disclosure of Clavin reads on a string member as claimed.

23. Further, the backing film of Clavin is formed of polyethylene (see column 5 lines 39-45), which meets newly added claim 61. The polyethylene backing of Clavin reads on the resiliently stretchable elongate string member as required by the presently claimed invention. As to the claim requirements of "first surface and the second surface...oppositely faced to each other", "the first surface and the second surface each have a pair of side edges...of the string member", "the individual side edges are each in liner forms in parallel to each other...in an unstretched state", "cross sections of the first surface...outwardly protruding arcuate shapes...when the string member is in the unstretched state...the cross sections each have a uniform form along the whole...in the unstretched state", these limitations are disclosed in Figure 13 (e.g. arcuate shape of the cross section) and Figure 15 or obvious optimization to one of ordinary skill in the art, motivated by the desire to produce a string member that can suitably be applied to eyelids.

24. As to the claimed features of "wherein the string member in the stretched state is configured to have a resilient shrinkability larger than a tension of skin on the eyelid and...recoiling back toward an unstretched state due to the resilient shrinkability to form a double eyelid" and "a first end of the string member and a second end of the string member...a part configured to be removed after the double eyelid is formed", it is

reasonable to presume that said features are necessarily present in the string member of Clavin.

25. Support for said presumption is based on the fact that as stated above the string members of Clavin and that of Applicant are structurally and compositionally equivalent. Therefore, said claimed features would be present. The burden is shifted to Applicant to prove it otherwise (*In re Fitzgerald*, 205 USPQ 594).

26. As to the claim requirement of the release material in a consistent and integral form, it would have been obvious to provide a release material in consistent and integral form, motivated by the desire to protect the adhesive layers.

27. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Calvin (US 4,653,483) in view of Samuelsen et al. (WO 99/38929). US 6,482,491B1 to Samuelsen is relied upon for convenience.

28. The invention of Clavin is previously disclosed. Clavin is silent as to teaching the individual release materials each include an arcuate groove along a surface of each of the adhesive layers. However, Samuelsen discloses an article having a surface showing adhesive properties and a cover layer (release layer) for protecting the adhesive surface (abstract). Additionally, the release layer of Samuelsen has indentations in the forms of grooves, ridges, bulges, bumps etc. (column 2 lines 22-26 and column 4 lines 20-35). This disclosure of Samuelsen reads on the release material having an arcuate groove as claimed. It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to use the release materials having arcuate groove, motivated by the desire to easily remove the release materials.

29. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clavin (US 4,653,483) in view of Hodgson (US 3,645,835).

30. Clavin does not explicitly teach "a first end of string tape member and a second end of the string member...holding portions configured to be held with fingertips, and the holding portions have no adhesive property or have a suppressed adhesive property". However, the invention of Hodgson is previously disclosed. Hodgson discloses that the two edges 24 of the backing material 2 are left uncoated (column 10, lines 31-32). The uncoated areas on the backing layer of Hodgson reads on a holding portion as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide holding portion having no adhesive property such that the string member can be handled easily during its application to an eyelid by a user and such arrangement would prevent user accidentally touching the adhesive layer and potentially contaminating the adhesive.

31. Claims 59 and 61 are under 35 U.S.C. 103(a) as being unpatentable over Hodgson (US 3,645,835) as applied to claims 39 and 51, and further in view of Berglund et al. (US 4,310,509).

32. Hodgson is silent as to teaching polyethylene. However, Berglund discloses a PSA having antimicrobial material in it. Further at column 4 lines 30-40; Berglund discloses that the homogeneous dispersion [i.e. adhesive] is coated onto various backings to form dressings, drapes, tapes, etc. The preferred backing material is polyethylene.

33. It is noted that Hodgson's invention is directed to PSA that are used in dressings, plasters, adhesive bandages etc. (column 1 lines 5-15). Hodgson is silent as to teaching polyethylene. Secondary reference of Berglund provides polyethylene that can be used in adhesive tapes, dressings etc.

34. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select the polyethylene backing as taught by Berglund and used as a backing in the invention of Hodgson, because selecting a known material based on its suitability for its intended use establishes a *prima facie* case of obviousness.

Response to Arguments

35. Applicant's arguments filed on 05/22/09 have been fully considered but they are not persuasive.

36. On page 3 of applicant's amendment, applicant argues that "Honda does not disclose or suggest "a resiliently stretchable elongate string member configured to adhere to the eyelid in a stretched state along a longitudinal direction, wherein the string member in the stretched state is configured to have resilient shrinkability larger than a tension of skin on the eyelid and also has sufficient width and a sufficient length such that the string member is configured to form the fold on the eyelid by adhering to the eyelid while the string member is in the stretched state and subsequently recoiling back toward an unstretched state due to resilient shrinkability to form a double eyelid" as recited in Claim 45. Additionally on page 4 of applicant's amendment, applicant argues that Honda does not disclose or suggest that the elastic material of the rod 1 described in Honda has a resilient shrinkability larger than the tension of the skin on the eyelid as Honda does not disclose or suggest stretching the rod 1 and then attaching the rod 1 to the eyelid.

37. The Examiner respectfully disagrees. It is submitted that applicant appears to interpret his claimed invention as that the double eyelid forming article (string member) is in contact with the skin of an eyelid. However, the claims as presently recited do not

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positively claim the double eyelid forming article in combination with a skin of an eyelid. Thus, the prior art of Honda does not have to explicitly disclose that the rod member is in contact with the skin of an eyelid. The Examiner submits that Honda's string member is formed of elastic material such as rubber (column 2, lines 25-30 and column 2, lines 35-40) and has adhesive coated on its entire surface (column 2, 35-40). Additionally Honda's string member and that of applicant are used in the same field, namely application to eye. Applicant's claimed invention essentially requires elongated string member that is stretchable and covered with adhesive. The Examiner submits that the string member of Honda is inherently stretchable since it is formed of elastic material such as rubber. Thus, the string member of Honda would necessarily be able to function in a manner as asserted by applicant above. Accordingly, applicant's arguments are not found persuasive.

38. On pages 3-4 of applicant's amendment, applicant argues that Honda does not disclose or suggest that the adhesive 3 is strong enough to hold on to the skin when the stretched rod 1 is attached to the skin and then allowed to recoil back to an unstretched state. On page 4 of applicant's amendment, applicant argues that "as the relationship between the resiliency of the string member and the strength of the adhesive of the claimed article are not disclosed or suggested in Honda, it is respectfully submitted that the rod 1 of Honda does not have the same structural configuration of that recited in Claim 45."

39. The Examiner submits that applicant's arguments are not commensurate in scope with the presently claimed invention, because presently claimed invention does not require that the adhesive has to be strong enough to hold on to the skin when the string member is attached to the skin and then allowed to recoil back to an unstretched state. Additionally, the presently claimed invention does not provide any relationship between the resiliency of the string member and the strength of the adhesive. Claims (e.g. claim 45) only require that adhesive layer covers the entire first and the second surface. Further, the arguments relating to the strength of the adhesive are relative without providing any numerical values associated with adhesive strength (e.g. bond strength between the adhesive layer and the skin). Accordingly, applicant's arguments are not found persuasive.

40. On page 4 of applicant's amendment, applicant argues that while Hodgson describes forming a wrinkle on skin, Hodgson is silent with respect to producing a double eyelid on the skin of an eyelid. Further, the surgical drape described in Hodgson can produce a wrinkle for example, on a forearm, without producing a double eyelid on the skin of the eyelid. Based on this, applicant concludes that Hodgson does not inherently have the same structural properties of resilient shrinkability and adhesiveness that the claimed double eyelid forming article does.

41. In response, it is submitted that at column 10 lines 39-40 Hodgson teaches "**The material is stretched adhered to the skin and allowed to contract** causing a wrinkle

effect". While Hodgson does not disclose adhering of his device to skin of an eyelid to form double eyelid, one would reasonably understand that if the Hodgson's device which is stretchable and can produce wrinkle effect upon contracting (resiliently shrinking), then it would be capable of producing a double eyelid on the skin of an eyelid. Additionally, the Examiner again submits that claims as presently recited does not require that the double eyelid forming article is positively in contact with the skin of an eyelid. Moreover, applicant has provided no factual evidence to support his assertion that the surgical drape of Hodgson can produce a wrinkle for example on a forearm without producing a double eyelid on the skin of the eyelid. Accordingly, applicant's arguments are not found persuasive.

42. On pages 6-7 of applicant's amendment, applicant argues that Clavin is silent with regards to first stretching the tape, and then allowing the resilient shrinkability to overcome the tension of the skin of the eyelid to form a double eyelid as the tape returns to its original size. According to applicant, Clavin merely describes that the adhesive strip 32 is placed on the eyelid 10 and then the user folds the eyelid 10 on to the adhesive strip 32. Applicant further argues that while Clavin describes that the adhesive strip can be formed of polyethylene; there are many different types of polyethylene with different structural properties such that the adhesive strip of Clavin does not inherently have resilient shrinkability larger than a tension of the skin.

43. In response, it is submitted that applicant's aforementioned arguments appears to be based on the assumption that applicant's claimed tape is in contact with the skin of the eyelid. However, claims as presently recited do not require that the double eyelid forming article is positively in contact with the skin of an eyelid. Additionally, the Examiner submits that Clavin's adhesive tape and applicant are formed of same material namely polyethylene (see column 5 lines 39-45). Therefore, the tape of Clavin is necessarily stretchable and has resilient shrinkability to overcome the tension of the skin of the eyelid to form a double eyelid as the tape returns to its original size. As to applicant's arguments that there are different types of polyethylene, the Examiner submits that while there may be different types of polyethylene, applicant's specification and/or claims provide no guidance as to what particular type of polyethylene applicant is using other than broadly reciting "polyethylene". Accordingly, applicant's arguments are not found persuasive.

44. On page 7 of the amendment, applicant states "The office Action in section 27 takes the position that above-quoted elements in Claim 45 are....On the contrary, in the double eyelid forming product of the type to simply stick as described in Clavin, it is necessary to stick the tape to the eyelid along the three-dimensional shape of the eyeball. Thus, a curve of at least a portion of the side edges is an indispensable requirement in Clavin and the tape with linear side edges entirely parallel to each other is not a part of the double eyelid forming product."

45. The Examiner respectfully submits that there appears to be no teaching or suggestion in Clavin that at least a portion of the side edges **must** be curved. Further, in absence of unexpected results providing a tape having linear side edges that are entirely parallel to each other would have been obvious modification recognized by one of ordinary skill in the art who is in possession of Clavin given that Clavin and applicant's tape are applied generally in the same area (i.e. skin of eyelid). Accordingly, applicant's arguments are not found persuasive.

Conclusion

46. **The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.** Nojiri, Hideyuki (EP 1 195 107 A2) is related to double eyelid forming tape or string.

47. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

48. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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49. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANISH DESAI whose telephone number is (571)272-6467. The examiner can normally be reached on Monday-Friday, 8:00AM-4:30PM.

50. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

51. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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